

DOCKET NO: 1247-0862-6E



IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :
REMY BADIN, ET AL : EXAMINER: CRONIN, STEPHEN
SERIAL NO: 09/534,973 :
3RD RCE FILED: FEBRUARY 1, 2005 : GROUP ART UNIT: 3747

FOR: HOLLOW GLASS PRODUCT WITH :
OFFSET COLLAR AXIS AND PROCESS
OF MANUFACTURING THE SAME

REPLY BRIEF

COMMISSIONER FOR PATENTS
ALEXANDRIA, VIRGINIA 22313

SIR:

This is a reply to an Examiner's Answer mailed May 5, 2006 in response to an Appeal Brief filed February 13, 2006 appealing from the final Office Action mailed September 9, 2005, for which a Notice of Appeal was timely filed December 9, 2005.

I. STATUS OF CLAIMS

Claims 1-5 and 16-33 are pending in this application and are being appealed. Claims 1-5 and 16-33 stand rejected and Claims 6-15 have been canceled.

II. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The grounds for rejection to be reviewed on appeal and outstanding in the present application are as follows: (1) the combination of Paley (U.S. Patent No. 1,971,164) with Jennings (U.S. Patent No. 4,079,859) to support a rejection of Claims 1-5 and 16-33 under 35 U.S.C. § 103(a); and (2) independent from their dependency from either Claim 1 or Claim 18, the combination of Paley and Jennings to support a rejection of Claims 24, 27, and 30-33 under 35 U.S.C. § 103(a).

III. ARGUMENT

The Examiner's Answer asserts that Paley teaches the claimed invention except for the collar extending beyond a cross-section of the main container body. However, Applicants note that Paley does not disclose a collar interposed between and communicating with a main container body and a secondary container body, as in independent Claims 1 and 8 as shown in, for example, Fig. 6. Collar 13 is provided between first part 4 and second part 5 and communicates with both.

Instead, Paley discloses neck 17 in Figure 1 and neck 17a in Figure 2, provided on container body portion 11 only, and not in communication with tube portion 19. Jennings does not cure these deficiencies.

Furthermore, the Examiner's Answer asserts that Jennings provides the deficiencies of Paley by providing a similar fluid holding container with a main body 1, a secondary body 7 and collar 7f, and that it would have been obvious to one of ordinary skill in the art to form the container of Paley in one piece and with an extended collar in the manner taught by Jennings since both inventions are directed at providing a means for dispensing measured liquids. Furthermore, the Examiner's Answer asserts that forming in one piece an article which has formerly been formed in two pieces and put together, involves only routine skill in the art.

The first assertion above does not provide any motivation for combining the references as required under 35 U.S.C. § 103(a). It merely argues that the references may be combined because both inventions are directed to a means for dispensing liquids.

The second assertion is fundamentally flawed because there is no article that was formerly formed in two pieces that includes all the features of Claims 1 or 8. Presumably, the combination of Paley and Jennings is intended as the article. However, as discussed above, there is no motivation given to combine the references and in any event the combination of Paley and Jennings still is not an article formerly formed in two pieces because there is no evidence that such an article was actually made or disclosed.

In paragraph 10, "Response to Argument" of the Examiner's Answer, it is asserted that the Applicant has not provided any explanations in the specification as to why the claimed product is formed. However, at page 3, lines 4-7, the specification states "[M]ore complex shapes of products have been envisaged for applications of packaging in the perfume and cosmetic industries... ." This is a clear assertion of why the product is formed.

Applicants assert that the teaching of Paley would discourage the modifications proposed by the Examiner. Specifically, page 1, lines 93-98 of Paley state

[T]he tube 19 and neck 17 are substantially wholly within the horizontal cross-sectional circular outline of the body 11. With

this construction the bottle 10 may be readily fitted into the seat or container on the centrifuging machine.

In response, the Examiner's Answer argues that Paley has not limited his invention to a bottle that is solely to be used for centrifuge purposes and nowhere has Paley stated that the neck cannot be located outside of the circular outline of the body. Applicants point out that using the absence of evidence does not meet the Office's burden of proof. Furthermore, Paley repeatedly emphasizes that tube 19 and neck 17 are substantially wholly within the horizontal cross sectional circular outline of the body and can be fitted into the centrifuge. See also page 2, lines 26-34 and Claims 1-5. Thus, Paley clearly teaches away from being combined with Jennings.

In view of the foregoing comments, each of the pending Claims 1-5 and 16-33 clearly distinguish over the applied art references, and thus the outstanding rejections must be REVERSED.

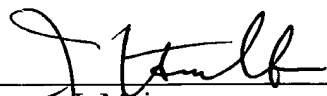
Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.

Customer Number

22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 06/04)



Gregory J. Maier
Registration No. 25,599
Robert T. Pous
Registration No. 29,099
Attorneys of Record

James D. Hamilton
Registration No. 28,421